

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

1996 OCT -3 AM 9:32

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF: § CERCLA DOCKET NO. 6-18-95
§
THE ODESSA DRUM SITE § ADMINISTRATIVE ORDER
ECTOR COUNTY, TEXAS § ON CONSENT
§
Proceeding under Sections §
107(a) and 122(h)(1) of the §
Comprehensive Environmental §
Response, Compensation and §
Liability Act, 42 U.S.C. §
§§ 9607(a) and 9622(h)(1) §

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Petrolite Corporation on behalf of itself and on behalf of its subsidiaries, affiliates, predecessors and successors (hereinafter referred to as "Respondent") to resolve all liability of Respondent, except as provided below, for response costs both past and future at the Odessa Drum Company, Inc., site (hereinafter the "Site").

2. EPA and Respondent agree that the actions undertaken by Respondent in accordance with this Consent Order do not constitute an admission of any liability by Respondent, nor do any findings of fact or determinations contained in this Consent Order constitute admissions by Respondent. Respondent does not admit, and retains the right to controvert, in any subsequent proceedings, other than proceedings to implement or enforce this

May 17, 1996

9322529



Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order, nor shall any Finding of Fact or Determination contained herein constitute a waiver of any defenses at law or in equity by Respondent.

II. JURISDICTION AND AUTHORITY

3. This Administrative Order or Consent is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 42 U.S.C. § 9622(h)(1), to reach settlements in actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987) and delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (May 11, 1994) and further re-delegated to the Director, Region 6 Superfund Division, by Region 6 Delegation No. R6-14-14-D (August 8, 1995).

4. Respondent agrees to undertake all actions required by the terms and conditions of this Consent order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. FINDINGS OF FACTS

5. The Odessa Drum Company, Inc. site is located on approximately 9.7 acres east of the corner of Alice and Judy Streets just outside the city limits of the City of Odessa, Texas. The Site, which is the location of an inactive drum recycling operation, consists of two contiguous tracts of land. The first tract encompasses approximately 4.8 acres and is located at the northeast corner of the intersection of Alice and Judy Streets. The legal description of this tract is as follows:

Tract 6, Block 2, GREENFIELD ACRES, a Subdivision in Ector County, Texas, according to the map or plat thereof of record in Volume 3, Page 59, Plat Records of Ector County, Texas; SUBJECT TO ALL prior mineral reservations made by previous grantors, oil and gas leases, drill site agreements, easements, pipelines, rights-of-way, water contracts and restrictions, if any, affecting said property and appearing of record in the Office of the County Clerk of Ector County, Texas.

LESS - a 100' X 200' tract in the northeasterly corner of said Lot 6 adjacent to Lot 5 of Block 2, more particularly described by metes and bounds in Warranty Deed from Bob W. Yates, and wife Tillie M. Yates to Antonio Olquin and Wife Belda Elaine Olquin, recorded in Volume 543, Page 622, of the Deed Records of Ector County.

The second tract, encompassing approximately 4.9 acres, is adjacent to the first tract and is located to the east of the

intersection of Alice and Judy Streets. The legal description of this tract is as follows:

Lot 5, Block 2, GREENFIELD ACRES, a Subdivision in Ector County, Texas, according to the map or plat thereof of record in Volume 3, Page 59, Plat Records of Ector County, Texas; SUBJECT TO ALL prior mineral reservations made by previous grantors, oil and gas leases, drill site agreements, easements, pipelines, rights-of-way, water contracts and restrictions, in any, affecting said property and appearing of record in the Office of the County Clerk of Ector County, Texas.

6. The Site is located in a mixed residential/industrial/oil and gas production/commercial area. Several residences are located adjacent to the Site.

7. EPA conducted a site assessment at the Site on April 24-27, 1990. During the site assessment, EPA representatives discovered approximately four thousand six hundred (4,600) drums, six (6) tanks, and other storage containers containing liquid, solid, and sludge waste materials containing hazardous substances, as defined at CERCLA Section 101(14), 42 U.S.C. § 9601(14), and further defined at 40 CFR § 302.4, abandoned on the Site.

8. Laboratory reports of samples collected from tanks at the Site indicate the following hazardous substances, as defined at CERCLA Section 101(14), 42 U.S.C. § 9601(14), and further

defined at 40 CFR § 302.4, were present in wastewater contained in the tanks:

Chromium
Lead
Ammonia

9. On May 6-9, 1990, EPA representatives collected samples of liquid materials contained in drums at the Site. The samples results indicate the following hazardous substances, as defined at CERCLA Section 101(14), 42 U.S.C. § 9601(14), and further defined at 40 CFR § 302.4, were contained in the drums:

Naphthalene
Toluene
Ethylbenzene
Trichloroethane
Heptachlor

10. Soil samples collected from six locations at the Site indicate the following hazardous substances, as defined at CERCLA Section 101(14), 42 U.S.C. § 9601(14), and further defined at 40 CFR § 302.4, were present in the soil:

Phenanthrene
Pyrene
Toluene

11. On August 2, 1990, the Regional Administrator of EPA Region 6 signed an Action Memorandum declaring that conditions at the Site constitute an imminent and substantial endangerment to the public health or welfare or the environment.

12. EPA conducted a removal action at the Site, pursuant to Section 104 of CERCLA, beginning on August 18, 1990. The removal action consisted of the following response activities, among others:

- A. Inventorying, staging, sampling, and hazard categorizing of over four thousand six hundred (4,600) 55-gallon drums containing wastes in a liquid and solid state.
- B. Sampling of liquid waste materials in tanks at the Site.
- C. Grouping of waste materials according to compatibility.
- D. Removal of liquid waste from drums and temporary bulk storage of such wastes pending arrangements for transportation and disposal.
- E. Cleaning and restacking of drums.
- F. Removal and disposal of liquid and solid waste materials to off-site disposal facilities.

13. Approximately 15,000 gallons of hazardous substances, as defined at CERCLA Section 101(14), 42 U.S.C. § 9601(14), and further defined at 40 CFR § 302.4, were removed from the Site and disposed of at off-site disposal facilities.

14. It is estimated that over 100,000 drums remained on the Site after EPA's removal action. The drums had been stacked over a large portion of the Site. Some of the drums were stacked in an unstable fashion. Some of the drums located at the Site have leaked, rusted, or been damaged causing materials within the drums to be released into the soil. The abandonment of drums and tanks containing hazardous substances, and the leaking or discharge of hazardous substances into the soil at the Site may present an imminent and substantial endangerment to human health, welfare, or the environment.

15. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and further defined at

40 CFR § 302.4, have been or are threatened to be released into the environment at or from the Site.

16. Due to the continued release or threatened release of hazardous substances into the environment, EPA is undertaking response action at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604.

17. Through January 31, 1994, EPA has incurred response costs at or in connection with the Site in the amount of \$2,440,025.

18. EPA estimates that it will incur \$4,623,964 in response costs at or in connection with the Site in conducting response actions after January 31, 1994, and EPA intends to perform the work in accordance with the Action Memorandum dated July 11, 1994; and expects that any future work beyond the total response costs estimates as defined in Paragraph 21 shall likewise be performed by the EPA.

19. Information currently known to EPA indicates that Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment at the Site, of a hazardous substance owned or possessed by Respondent.

20. In evaluating the settlement embodied in this Consent Order, EPA has considered the potential costs of conducting the remaining required response actions at or in connection with the Site taking into account possible cost overruns in completing the response action and possible future costs if the response action is not protective of public health or the environment.

21. Payment required to be made by Respondent pursuant to this Consent Order constitutes its share of the total response costs at the Site which, based upon currently available information, EPA estimates will be SEVEN MILLION SIXTY THREE THOUSAND NINE HUNDRED AND EIGHTY NINE DOLLARS (\$7,063,989) (hereinafter "total response costs estimate"). As of the effective date of this Consent Order, EPA represents and warrants that the response actions conducted to date are fully within the budget which was the basis for the total response costs estimate, that there is no information known to EPA which provides any reason to believe that the total response costs estimate is less than necessary to meet all required response costs for the Site, and that neither the condition of the groundwater nor the nature of the wastes found at the Site differs materially from that which served as the basis for EPA's total response costs estimate.

22. EPA has entered into a de minimis settlement with 127 parties who have paid or have agreed to pay a total of \$1,459,606.32 as their share of the total response costs estimate. Respondents to the de minimis Consent Order either arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment at the Site, of a hazardous substance owned or possessed by such person. EPA has considered the nature of its case against those parties in evaluating the de minimis settlement.

23. Based on its evaluation of documents and information contained in the administrative record, EPA developed a proposal for allocation of total response costs. This proposal served as the basis for the de minimis settlement offer and also quantified a fair and reasonable allocation of the total response costs estimate among the non-de minimis potentially responsible parties ("PRPs") in a document entitled "Major Contributor Allocation Table" dated 2/26/94. The payment required to be made by Respondent pursuant to this Consent Order is equivalent to 100% of Respondent's share of the total response costs estimate provided in this EPA proposal for allocation. In evaluating this settlement, EPA considered the nature of its case against Respondent and other PRPs and Respondent's willingness to make full payment of its settlement amount within thirty (30) days of the effective date of this Consent Order.

III. DETERMINATIONS

Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

24. The Odessa Drum Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

26. Respondent is a potentially responsible party within the meaning of Sections 107(a) and 122(h)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(h)(1).

27. The substances listed or stated in paragraphs 8 through 10 are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and further defined at 40 CFR § 302.4.

28. The past, present, or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. Prompt settlement with Respondent is fair, reasonable and practicable and in the public interest within the meaning of Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

IV. ORDER

Based upon the administrative record and the Action Memoranda for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED TO AND ORDERED:

30. Respondent shall pay to the Hazardous Substance Superfund the \$559,757.90 which is hereinafter referred to as the Settlement Amount. Respondent shall remit payment of its Settlement Amount not later than thirty (30) days after the effective date of this Consent Order.

31. The Settlement Amount to be paid by Respondent represents Respondent's share of response costs related to the Site, including those costs described in paragraphs 17 and 18.

32. Respondent shall pay its Settlement Amount by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check shall reference the "Odessa Drum Site," the name and address of the Respondent, and the words "EPA Docket Number 6-18-95," and shall be sent to:

EPA Superfund - Odessa Drum Company Site (Z2)
CERCLIS # TXD008012254
Superfund Accounting
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND

Respondent shall pay the following stipulated penalty for each day that the payment required by paragraph 30 hereof is late (EPA shall deem payment to be late if the postmark date of the payment is later than the due date):

<u>Amount Per Day</u>	<u>Number of Days Late</u>
\$500	1 through 14 days
\$1000	15 days and beyond

33. Respondent shall simultaneously send a copy of its check to:

Mr. Carl Bolden
Superfund Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

V. COVENANT NOT TO SUE

34. Subject to the reservations of rights under Paragraphs 35 - 36 of this Consent Order, upon payment of the Settlement Amount specified for Respondent in paragraph 30 hereof, EPA

covenants not to sue or to take any other civil or administrative action against Respondent for any and all civil liability for all response costs incurred by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607 a) with regard to the Site. The United States Department of Justice has concurred in this covenant not to sue.

In consideration of EPA's covenant not to sue in Paragraph 34 of this Consent Order, Respondent agrees not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund, and agrees not to seek any other costs, damages, or attorney's fees from the United States arising out of response actions at the Site.

VI. RESERVATION OF RIGHTS

35. Nothing in this Consent Order is intended to be, and this Consent Order shall not be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, at law or in equity, which the United States, including EPA, may have against Respondent for the future response costs incurred after January 31, 1994, that are in excess of EPA's future response cost estimate of \$4,623,964. In consideration for the reservation of rights in this paragraph 35, the United States, including EPA, agree that any claim for future response costs that are in excess of EPA's future response cost estimate of \$4,623,964 shall be limited to Respondent's fair share of the

future response cost claim as determined by comparing Respondent's payment in paragraph 30 with the "total response cost estimate" described in paragraph 21 of this Agreement. Nothing in this paragraph or this Consent Order shall be construed as a waiver of Respondent's defenses to claims for future response costs.

36. Nothing in this Consent Order is intended to be, and this Consent Order shall not be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which the United States, including EPA, may have against Respondent for:

- (a) any liability as a result of failure to make the payment required by paragraph 32 of this Consent Order;
- (b) any liability for damages to natural resources; or
- (c) any criminal liability.

Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Respondent if information not currently known to EPA or conditions not currently known are discovered and these previously unknown conditions or this information together with other relevant information indicate that the removal action is not protective of human health or the environment.

Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action,

administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation, or other entity not a signatory to this Consent Order.

VII. CONTRIBUTION PROTECTION

37. With regard to claims for contribution against Respondent for matters addressed in this Consent Order, the parties hereto agree that the Respondent will have resolved its liability to the EPA and is entitled to such protection from contribution actions or claims as is provided by CERCLA Sections 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). The matters addressed in this Consent Order are all response costs incurred by the EPA, including without limitation any such costs which have not yet been incurred as of the date of this Consent Order and any such costs for which the United States has been or will be reimbursed by any other party. The parties to this Consent Order believe that this settlement represents Respondent's fair share of, and provides an equitable apportionment of, its entire liability for all of EPA's Site response costs.

VIII. PARTIES BOUND

38. This Consent Order shall apply to and be binding upon Respondent and its directors, officers, employees, agents, successors, and assigns. The signatory to this Consent Order

represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the Respondent represented by him or her.

IX. PUBLIC COMMENT

39. This Consent Order shall be subject to a thirty (30)-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

X. ATTORNEY GENERAL APPROVAL

40. This Agreement shall be subject to prior written approval of the Attorney General of the United States. In the event that this Agreement is disapproved by the Attorney General, this Agreement shall be null and void.

XI. EFFECTIVE DATE

41. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Paragraph 39 of this Consent Order has closed and that comments received, if any, do not

require modification of or EPA withdrawal from this Consent Order, and that this Consent Order has been approved by the Attorney General.

IT IS SO AGREED AND ORDERED:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

By:

Mvron O. Knudson
Mvron O. Knudson
Director, Superfund Division
U.S. EPA, Region 6

5/23/96
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:	§	CERCLA DOCKET NO. 6-18-95
THE ODESSA DRUM SITE	§	ADMINISTRATIVE ORDER
ECTOR COUNTY, TEXAS	§	ON CONSENT
	§	
Proceeding under Sections	§	
107(a) and 122(h)(1) of the	§	
Comprehensive Environmental	§	
Response, Compensation and	§	
Liability Act, 42 U.S.C.	§	
§§ 9607(a) and 9622(h)(1)	§	

The undersigned Respondent has reviewed and hereby consents to the foregoing Consent Order In the Matter of the Odessa Drum Site and agrees to be bound by its terms. The undersigned officer has the authority to bind the undersigned Respondent to this Consent Order.

AGREED:

PETROLITE CORPORATION

APPROVED
AS TO FORM
LEGAL DEPT.
BY: *[Signature]*
DATE: *5/20/96*

By

R Churchill

Signature

May 20, 1996

Date

Ralph J. Churchill

Print name

Vice President, General Manager

Title